

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

2. The school's written report of the suspected abuse noted that the child's statements were "rote" and "repetitive"

as reported (as quoted above) to several school officials.

The school's report concludes with the following:

School Staff is very concerned about the safety of this child. There is concern about what may or may not have happened with (petitioner), but there is, also, a concern about (mother) due to (child's) level of knowledge around adult type issues as reported to be communicated to her by (mother). We are finding that the question about whether or not (child) has been coached or instructed on what to say about the incident with (petitioner) has been prevalent among various staff who have encountered (child's) reports. The question comes about as a result of (child) reciting and repeating isolated events but being unable to describe details of the incident or give reasons other than stealing money for feeling unsafe with (petitioner). In addition, (child) prefaces her reports with "I know you won't believe me" and "I know this (adult information) because Mommy told me."

3. The school officials also noted that the child had been dropped off at school that day by her mother, and had "immediately approached a staff member" with her accusation.

4. On December 5, 2007 a DCF investigator and a police officer interviewed the child. The child essentially repeated verbatim what she had told school officials the day before. The investigator described the child's statements as being repetitive and lacking in any detail or context. She described the child's demeanor as being without emotion, with a flat affect.

5. The investigator concluded that the child's accusations appeared to have been "rehearsed". She testified

that she was aware that the child's parents had been involved in an ongoing custody dispute, and that the child's mother had made several other allegations of a similar nature against the petitioner, none of which had been credited by the Department, the courts, or law enforcement.

6. The investigator also interviewed the child's mother, sister, step-father, therapist and doctor. The interviewer did not believe that any of these individuals added credence to the child's allegations.

7. The investigator also interviewed the petitioner, who denied the allegations, but refused to take a polygraph test on the advice of his attorney. The investigator testified that she did not recommend to the Department that the report be substantiated.

8. Following the submission of the investigator's report the Department referred the case to the New England Counseling and Trauma Center in Williston, Vermont. The Center conducted a detailed and thorough investigation and evaluation that included interviews with the child, her mother, her therapist, her pediatrician, the investigating police officer, and the child's teacher, school counselor, and school nurse. The

Center also reviewed DCF records of this and prior investigations involving the child.<sup>1</sup>

9. The Center set forth its findings and recommendations in a lengthy (12 page, single spaced) report dated April 28, 2008. The report concluded with the following summary:

(Child) is a six-year-old girl referred for evaluation following concerns regarding potential sexual victimization. Diagnostically, (child) appears to be experiencing significant posttraumatic stress, including avoidance behaviors, emotional numbing, sexual distress and preoccupation, and periods of dissociation. (Child) experiences periods of disorganization and dysregulation. (Child) has made repeated disclosures of sexual abuse by her father to numerous individuals. She has been interviewed on multiple occasions and has consistently reported inappropriate sexual contact by her father.

There are documented concerns regarding the manner and content of (child's) disclosures, specifically that (child) has made nearly the same exact disclosure every time with minimal collaborative detail and very little observable affect. While the nature of the disclosure is concerning to some because of the rote-like quality of the statements, it is the same quality that solidifies the authenticity/credibility of the disclosures for others. It may be important to consider that the consistencies in (child's) disclosures are a result of her honestly repeating her experience to adults and a function of her ability to tell the truth. Similarly, it is important to consider that (child's) apparent detached affect when describing the alleged abuse may be a result of her emotional avoidance and numbing related to the posttraumatic response. (Child) seems to be aware that some people do not believe her reports of sexual abuse.

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<sup>1</sup> At the time of the evaluation the question of whether criminal charges relating to the incident would be filed against the petitioner had not been resolved, and on the advice of his attorneys the petitioner did not participate in the Trauma Center's evaluation. The parties have since advised the Board that criminal charges against the petitioner are not being pursued.

She has stated that this makes her feel sad. (Child) added this to her list of worries.

(Child) is aware of instances of domestic violence between (petitioner) and (mother). (Child) has shared specific examples with various adults. It is plausible that (child) is experiencing an increase in anxiety about her safety with her father because of hearing traumatic stories and witnessing her mother's negative response to (petitioner).

Although there are questions of concerns regarding the veracity and authenticity of the reports of sexual abuse made by (child), there seems to be sufficient evidence to suggest that (child) is experiencing significant posttraumatic symptomatology. (Child) appears to be experiencing emotional and behavioral symptoms consistent with a diagnosis of Posttraumatic Stress Disorder. At the very least, (child) has experienced poor parental boundaries and has been subjected to significant parental and familial conflict. (Child) appears overwhelmed by her present circumstances and has likely been inappropriately placed in the middle of her parents' discord and strife.

On a positive note, (child) appears to be resilient child. She does well academically and behaviorally in the school setting, demonstrating an ability to manage her anxiety and distress. It is important to note that it is not unusual or uncommon for traumatized children to function well in a particular setting, while other areas of a child's life appear to chaotic and problematic. It would appear that (child) feels uncomfortable in her school environment and possibly experiences fewer triggers in that setting, that remind her of her current life situation.

10. Included in the report's recommendations was that the petitioner be allowed supervised visitation in view of the "marked uncertainty" as to the validity of the repeated reports of sexual abuse.

11. Based on the Center's report, the Department substantiated the allegations of sexual abuse against the petitioner. At the hearing the Department represented that it had no testimony or other evidence to offer that conflicted with or added to the report's findings and conclusions.

12. On the basis of the above-referred-to testimony and documents, it cannot be found that a preponderance of evidence supports a finding that the petitioner sexually abused his daughter. It is found that the evidence pointing to the likelihood of fabrication and parental instigation and orchestration outweighs the crediting of the child's allegations.

ORDER

The Department's decision is reversed, and the petitioner's name is expunged from the Department's child abuse registry.

REASONS

The Department is required to investigate reports of child abuse or neglect and to maintain a registry with the names and records of those who are determined to have a "substantiated" finding of abuse or neglect. 33 V.S.A. § 4913 and 4916. A report is substantiated when it is "based upon accurate and reliable information that would lead a reasonable

person to believe that the child has been abused or neglected." 33 V.S.A. § 4912(10).

The statutory sections relied upon by DCF in this matter include the following at 33 V.S.A. § 4912:

(2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An "abused or neglected child" also means a child who is sexually abused or at substantial risk of sexual abuse by any person.

. . . .

(8) "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts a sexual conduct, sexual excitement or sadomasochistic abuse involving a child.

In this case, the petitioner denies that he ever engaged in sexual acts with his child. He does not question that the acts reported by her, if they occurred, would be considered sexual abuse under the above statute. However, in a *de novo* hearing it is the Department's burden of proof to establish the facts of the allegations by a preponderance of evidence. Based on the above findings, it must be concluded that the

Department's evidence in this matter fails to meet this threshold.<sup>2</sup>

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<sup>2</sup> At the hearing, both parties recognized and agreed that the girl continues to be in therapy, that her therapist is a "mandated reporter" under the statute, and that the Department can open a new investigation if the therapist, or anyone else, were to report new information regarding the past, present or future abuse of the child.